SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 06/03/2025

INSTRUCTIONS FOR CONTESTING TENTATIVE RULING IN DEPARTMENT 34

The tentative ruling will become the ruling of the Court unless by 4:00PM of the Court day preceding the hearing, notice is given of an intent to argue the matter. Counsel or self-represented parties must email Department 34 (Dept34@contracosta.courts.ca.gov) to request argument and must specify, in detail, what provision(s) of the tentative ruling they intend to argue and why. Counsel or self-represented parties requesting argument must advise all other counsel and self-represented parties by no later than 4:00PM of their decision to argue, and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Pursuant to Local Rule 3.43(2).)

ALL APPEARANCES TO ARGUE WILL BE IN PERSON OR BY ZOOM, PROVIDED THAT PROPER NOTIFICATION IS RECEIVED BY THE DEPARTMENT AS PER ABOVE.
Zoom link-

https://contracosta-courts-ca.zoomgov.com/j/1611085023?pwd=SUxPTEFLVzRFYXZycWdTWlJCdlhIdz09

Meeting ID: 161 108 5023
Passcode: 869677

Law & Motion

1. 9:00 AM CASE NUMBER: L24-01188
CASE NAME: FREDY'S ROOFING VS. 1ST STREAMLINE CONSTRUCTION INC.
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE DEFAULT AND ANY DEFAULT JUDGMENT ENTERED AGAINST DEF 1ST STREAMLINE CONST INC FILED 2/27/25**
FILED BY: 1ST STREAMLINE CONSTRUCTION INC.
TENTATIVE RULING:

Defendant 1st Streamline Construction Inc. ("Defendant") filed a Motion to Set Aside Default and Any Default Judgment Entered on February 27, 2025 ("Motion to Set Aside Default"). The Motion to Set Aside Default was set for hearing on June 3, 2025.

Background

Plaintiff Fredy's Roofing ("Plaintiff") filed a Complaint on March 18, 2024.

A Proof of Service of Summons was filed August 5, 2025 (the "8/5/25 POSS"). The 8/5/25 POSS reflects service on Defendant by service on Timothy Stevenson as the "Agent for Service" for Defendant, at an address of 38 Nightingale Ct, Oakley, California. 8/5/25 POSS, ¶¶3-4. This service was done by **substitute service on July 26, 2024**, at 8:05 am by delivery to a "Jane Doe" who "[c]onfirmed she lived there." *Id*. at ¶5. The service was done by a registered process server. *Id*. at ¶7. An amended Proof of Service of Summons was filed on August 16, 2025 (the "8/16/25 POSS"). The details of the service are identical in both proofs, except that the amended version checks a different box at Paragraph 6. See 8/16/25 POSS, ¶6.

A default was entered against Defendant on November 1, 2024. Thereafter, a request for entry of a default judgment was submitted to the Court. However, no default judgment has been entered to date.

Defendant filed its Motion to Set Aside Default. The motion is supported by the Declaration of Timothy Stevenson filed February 27, 2025 (the "Supporting Declaration").

Plaintiff filed its Limited Opposition to Defendant's Motion to Set Aside Default (the "Opposition") on May 19, 2025, along with a Declaration of Plaintiff's attorney Robert Charles Ward. On May 20, 2025, an amended version of the opposition declaration was filed (the "Amended Opposition Declaration").

Analysis

1. Defendant Fails To Demonstrate That Service Was Defective.

Defendant argues that the service was defective. While defendant acknowledges that Timothy Stevenson is the agent for service of process for Defendant, Defendant contends that Mr. Stevenson was not validly served.

The bulk of Mr. Stevenson's Supporting Declaration relates to assertions the underlying matters, which is not particularly relevant to the issue of setting aside the default and the validity of service. See Supporting Declaration, ¶¶5-18. Nothing in his declaration addresses, with any specificity, the substitute service on July 26, 2024. *Id*. at ¶1 *et seq*. Indeed, after mentioning an accident that occurred in October 2023, the declaration then begins discussing getting continuing "medical attention" in early 2025. See *id*. at ¶¶19-20. Then the declaration references making police reports in January and July 2024. See *id*. at ¶¶21. Nothing is addressed about the circumstances surrounding the service made in July 2024.

Other than the declaration, the only other evidence proffered are a few exhibits attached to the moving brief. See Motion to Set Aside Default, **Exhibit 1**. However, the exhibits are not properly attached to any declaration. Accordingly, there is no foundation for the Court's

receipt and consideration of any of them. Even if the Court were to consider them, they appear to consist of police report records that have no bearing on the issue of the validly of service in July 2024.

The service was done by a registered process server. 8/5/25 POSS, ¶7 and 8/16/25 POSS, ¶7. This raises a presumption of valid service. See *Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795 (the filing of a proof of service creates a rebuttable presumption that the service was proper). The Court does not find that the proffered evidence rebuts that presumption.

The conclusory statement in the moving brief that "DEFENDANTS were not served via the registered agent for service of process" is unavailing. No credible facts have been offered to rebut the process server's proof of service reflecting valid substitute service on Mr. Stevenson as the "Agent for Service" for Defendant.

2. Defendant Fails To Establish That The Default And Any Entry Of Judgment Thereon Are Void.

The Court has authority to vacate a void judgment pursuant to Code of Civil Procedure section 473(d). See Code Civ. Proc. § 473(d) ("The court ... may, on motion of either party after notice to the other party, set aside any void judgment or order."); see also *Sindler v. Brennan* (2003) 105 Cal.App.4th 1350, 1353 [a judgment void on its face because rendered when the court lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant is subject to collateral attack at any time and may be set aside under Code of Civil Procedure section 473, subdivision (d)].

In addition, a judgment may be set aside by a court if it has been established that extrinsic factors have prevented one party to the litigation from presenting their case. *In re Marriage of Park* (1980) 27 Cal.3d 337, 342. The grounds for such equitable relief are commonly stated as being extrinsic fraud or mistake. *Id*. Those terms are given a broad meaning and tend to encompass almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing. *Id*.; see also *Aldabe v. Aldabe* (1962) 209 Cal.App.2d 453, 474 ("Fraud or mistake is extrinsic when it deprives the unsuccessful party of an opportunity to present his case to the court.") quoting *Westphal v. Westphal* (1942) 20 Cal.2d 393, 397.

First, no default judgment has been entered to date, as noted above. In any event, the evidence proffered by Defendant does not establish any grounds for the Court to conclude that the default or any default judgment entered would somehow be void. No extrinsic fraud or mistake is shown by the proffered evidence.

3. Defendant Fails To Establish That The Default Resulted From Mistake, Inadvertence, Surprise, Or Excusable Neglect.

Under Code of Civil Procedure section 473(b), the Court may, in its discretion, relieve a

party from a default judgment resulting from "his or her mistake, inadvertence, surprise, or excusable neglect." Code Civ. Proc., § 473(b); *Rivercourt Co. Ltd. v. Dyna-Tel, Inc.* (1996) 41 Cal.App.4th 1477, 1480 ("*Rivercourt*"). A motion seeking relief under section 473 is addressed to the sound discretion of the trial court. *Rivercourt*, *supra*, 41 Cal.App.4th at 1480. Neither mistake, inadvertence, nor neglect will warrant relief unless upon consideration of all of the evidence it is found to be excusable. *Conway v. Municipal Court* (1980) 107 Cal.App.3d 1009, 1017. The party seeking relief under section 473(b) bears the burden of establishing that the mistake, inadvertence, surprise or neglect was excusable. *Id*.

For the reasons discussed above, the evidence proffered by Defendant does not address the circumstances of the service and failure to timely respond, much less any factual showing of any specific mistake, inadvertence, surprise, or excusable neglect that led to the default. The relevant time period is that between the asserted service in July 2024 and the entry of default on November 1, 2024. However, Mr. Stevenson's Supporting Declaration quite literally says nothing about what was happening during that time period other than to recite the fact that the default was requested and entered and that it was done without a "meet and confer" as discussed further below. That does not show the existence of any mistake, inadvertence, surprise, or excusable neglect on the part of Defendant.

4. Defendant Fails To Demonstrate That Defendant Did Not Have Actual Notice Of The Pending Lawsuit.

Code of Civil Procedure section 473.5 allows a party to bring a motion to set aside a default entered against the party where "service of a summons has not resulted in actual notice to a party in time to defend the action." Code Civ. Proc. § 473.5(a). The motion "shall be accompanied by an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect." *Id*. § 473.5(b).

Defendant has not demonstrated a lack of actual notice in time to defend the action.

First, there is nothing in the Supporting Declaration stating that Mr. Stevenson, as Defendant's owner and Agent for Service of Agent was not actually aware of the existence of this lawsuit in July 2024 or the months afterward before the default, or assertions to that effect. He states that there was "NO meet-and-confer with me." See Supporting Declaration, ¶3. That is objectively not a statement tantamount to a representation that Mr. Stevenson or anyone else with his business was not aware of the existence of this lawsuit in the relevant timeframe.

Second, Defendant has certainly not proffered an affidavit showing under oath that its lack of actual notice in time to defend the action was not caused by its avoidance of service or

inexcusable neglect, as required under the statute for relief on this ground.

Third, and most importantly, as pointed out in the Opposition papers, the evidence establishes that Defendant knew full well of the pendency of the lawsuit and, for whatever reason, failed to timely respond.* See Amended Opposition Declaration, ¶2 *et seq*. Indeed, Mr. Stevenson personally attended case management proceedings before the entry of the default. Amended Opposition Declaration, ¶3 and **Exhibit C**.

*The Amended Opposition Declaration also makes reference to some discussions between counsel regarding a stipulation to set aside the default. Notwithstanding the ruling herein, the Court encourages the parties to consider resolving this matter on the basis of such a stipulation which may save all parties further litigation over the matter and permit the matter to be resolved on its merits. Nonetheless, as it stands, the Court finds the motion papers wholly inadequate to establish a basis for the requested relief.

Disposition

The Court finds and orders as follows:

1. The Motion to Set Aside Default is DENIED.
2. Defendant's request for sanctions is DENIED.

2. 9:00 AM CASE NUMBER: MSL14-01638
CASE NAME: CACH VS SHANKLE
***HEARING ON MOTION IN RE: MOTION FOR DISMISSAL**
FILED BY:
****TENTATIVE RULING:****

Defendant and judgment debtor Robert Shankle ("Defendant") filed a Motion for Dismissal on February 25, 2025 (the "Motion for Dismissal"). The Motion for Dismissal was initially set for hearing on May 6, 2025.

In its tentative ruling for that hearing date, the Court observed that Defendant's motion was procedurally defective in that no notice was given of the hearing date. The Court *sua sponte* continued the matter for hearing to June 3, 2025 and clerk of the Court was directed to give notice of the next hearing date to all parties. Notice was duly given by the clerk. See Notices of Hearing dated May 6, 2025.

No opposition to the motion has been filed to date.

Background

Plaintiff CACH, LLC ("Plaintiff") filed a Complaint on April 8, 2014. A default was entered against Defendant on May 5, 2015. Thereafter, a default money judgment was entered on

September 11, 2015 in the total amount of $8,873.11 (the "Judgment").

Analysis

By Defendant's Motion for Dismissal, Defendant seek to dismiss the money Judgment entered against him more than ten years ago, back in 2015.

Defendant's motion rests on the supposed merits of the case. He asserts "there is no case against me." See Motion for Dismissal, p. 1; see also Declaration of J. Robert Shankle as part of Motion for Dismissal, ¶¶1-5. He makes reference to a purported failure to produce evidence of liability for the subject debt. *Id*. He asserts that he is guilty of "identity theft." *Id*. at p. 2.

Defendant's motion fails to articulate any basis under the law to set side the Judgment or otherwise dismiss the case and the Court does not discern any from its review of his supporting declaration. Simply attempting to argue the merits and challenge the sufficiency of Plaintiff's evidence is not sufficient. The time to argue the merits was ten years ago when Defendant had an opportunity to appear in the case and defend against the claim. He failed to do that and a default was entered, followed by a default Judgment.

Defendant's recitation of the "statue [sic] of limitations" is erroneous. Except as otherwise provided by statute, a money judgment is enforceable under the Enforcement of Judgments Law (EJL) for a ten (10) year period following the date of entry of the judgment. Code Civ. Proc. § 683.020(a); see CJER, *California Judges Benchbook: Civil Proceedings—After Trial* (2024) ("CJER Civ. Pro.—After Trial"), § 6.177. The Judgment was entered herein on September 11, 2015 and, therefore, it remains enforceable and is subject to renewal under the applicable provisions of the EJL.

Disposition

The Court finds and orders as follows:

1. The Motion for Dismissal is DENIED.